

By: Leach

H.B. No. 3250

A BILL TO BE ENTITLED

AN ACT

relating to public work contracts of governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 2269, Government Code, is amended by adding Section 2269.0525 to read as follows:

Sec. 2269.0525. PREQUALIFICATION PROCESS. (a) A governmental entity may implement a prequalification process to eliminate unqualified offerors from consideration for a public work project under a method authorized by this chapter. A governmental entity that implements a prequalification process shall advertise or publish notice of the prequalification process along with a request for qualifications in a manner prescribed by law. In addition, the governmental entity may directly solicit qualifications from potential offerors if the competitive requirements of this chapter and other applicable law are followed.

(b) If a governmental entity considers a construction contract using competitive bidding under this chapter, in implementing a prequalification process under Subsection (a), the governmental entity:

(1) may not rank potential offerors; and  
(2) shall determine if any potential offerors meet minimum qualification requirements for completing the construction contract.

(c) A governmental entity may consider the following

1 factors during the prequalification process:

2 (1) the potential offeror's experience with other  
3 construction projects for the governmental entity;

4 (2) the potential offeror's commercial and financial  
5 history and stability;

6 (3) the potential offeror's ability to self-perform  
7 the construction project services;

8 (4) the potential offeror's familiarity and experience  
9 with subcontractors and suppliers in the area served by the  
10 governmental entity;

11 (5) whether the potential offeror has been involved in  
12 litigation related to a construction project during the preceding  
13 five years;

14 (6) the potential offeror's ability and capacity to  
15 provide performance and payment bonds;

16 (7) whether the potential offeror has ever failed to  
17 complete a project for a governmental entity;

18 (8) the potential offeror's experience with  
19 construction projects of similar size and scope; and

20 (9) the qualifications and experience of the potential  
21 offeror's proposed project team.

22 SECTION 2. Section 2269.055, Government Code, is amended to  
23 read as follows:

24 Sec. 2269.055. CRITERIA TO CONSIDER. (a) In determining  
25 the award of a contract under this chapter, the governmental entity  
26 may consider:

27 (1) the price;

1           (2) the offeror's experience with similar construction  
2 projects and reputation;

3           (3) the quality of the offeror's goods or services;

4           (4) the impact on the ability of the governmental  
5 entity to comply with rules relating to historically underutilized  
6 businesses;

7           (5) the offeror's safety record;

8           (6) the offeror's proposed personnel;

9           (7) whether the offeror's financial capability is  
10 appropriate to the size and scope of the project; and

11           (8) any other relevant factor specifically listed in  
12 the request for bids, proposals, or qualifications.

13           (b) In determining the award of a contract under this  
14 chapter, the governmental entity shall:

15           (1) consider and apply any existing laws, including  
16 any criteria, related to historically underutilized businesses;  
17 [~~and~~]

18           (2) consider and apply any existing laws, rules, or  
19 applicable municipal charters, including laws applicable to local  
20 governments, related to the use of women, minority, small, or  
21 disadvantaged businesses; and

22           (3) consider good faith efforts to comply with laws,  
23 rules, or applicable municipal charters described by Subdivision  
24 (2).

25           (c) In this section, "good faith effort" means documented  
26 evidence of outreach to enlist services, or bids and proposals,  
27 from available, certified, and qualified businesses.

1 SECTION 3. Section 2269.056(b), Government Code, is amended  
2 to read as follows:

3 (b) The governmental entity shall base its selection among  
4 offerors on applicable criteria listed for the particular method  
5 used. The governmental entity shall publish in the request for  
6 proposals or qualifications the:

7 (1) criteria that will be used to evaluate the  
8 offerors;

9 (2) [, and the] applicable weighted value for each  
10 criterion; and

11 (3) detailed methodology for scoring each criterion.

12 SECTION 4. Subchapter B, Chapter 2269, Government Code, is  
13 amended by adding Section 2269.0565 to read as follows:

14 Sec. 2269.0565. EXPLANATION OF EVALUATION AND RANKING. (a)  
15 An offeror who submits a bid, proposal, or qualification for a  
16 construction contract under this chapter and who is not awarded the  
17 contract may make a request in writing to the governmental entity to  
18 provide an explanation of its evaluation and, if applicable,  
19 ranking of the offeror's submission if the submission was:

20 (1) evaluated or ranked differently than a comparable  
21 submission from the offeror to the governmental entity during the  
22 preceding year;

23 (2) developed using the same data that was used to  
24 develop the offeror's previous submission; and

25 (3) evaluated or ranked using the same criteria that  
26 was used to evaluate or rank the offeror's previous submission.

27 (b) Not later than the 30th day after the date a request is

1 made under Subsection (a), the governmental entity shall deliver to  
2 the offeror a written explanation of its evaluation and, if  
3 applicable, ranking of the offeror's submission, including an  
4 explanation of why the submission was evaluated or ranked  
5 differently than the offeror's previous submission to the  
6 governmental entity.

7 SECTION 5. Section 2269.103, Government Code, is amended to  
8 read as follows:

9 Sec. 2269.103. PREPARATION OF REQUEST. (a) The  
10 governmental entity shall prepare a request for competitive bids  
11 that includes construction documents, estimated budget, project  
12 scope, estimated project completion date, and other information  
13 that a contractor may require to submit a bid.

14 (b) Before preparing a request for competitive bids under  
15 Subsection (a), a governmental entity may use the prequalification  
16 process described by Section 2269.0525.

17 SECTION 6. Section 2269.153, Government Code, is amended to  
18 read as follows:

19 Sec. 2269.153. PREPARATION OF REQUEST. (a) The  
20 governmental entity shall prepare a request for competitive sealed  
21 proposals that includes construction documents, selection criteria  
22 and the weighted value for each criterion, estimated budget,  
23 project scope, estimated project completion date, and other  
24 information that a contractor may require to respond to the  
25 request.

26 (b) Before preparing a request for competitive sealed  
27 proposals under Subsection (a), a governmental entity may use the

1 pregualification process described by Section 2269.0525.

2           SECTION 7. The change in law made by this Act applies only  
3 to a public work contract for which a governmental entity first  
4 advertises or otherwise solicits bids, proposals, offers, or  
5 qualifications or makes a similar solicitation on or after the  
6 effective date of this Act. A public work contract for which a  
7 governmental entity first advertises or otherwise solicits bids,  
8 proposals, offers, or qualifications or makes a similar  
9 solicitation before the effective date of this Act is governed by  
10 the law in effect on the date the advertisement or solicitation is  
11 made, and that law is continued in effect for that purpose.

12           SECTION 8. This Act takes effect September 1, 2017.